REMARKS

In the present Amendment, claims 1 and 9 have been amended to incorporate the subject matter of claims 3 and 11, respectively. Claims 3 and 11 have been cancelled. Claim 15 has been amended for clarification. Support for the amendment is found, for example, at page 6 of the specification. No new matter has been added, and entry of the Amendment to place the present application in condition for allowance is respectfully requested.

Upon entry of the Amendment, claims 1, 4-9, 12, 14 and 15 will be pending, of which claims 9 and 12 are withdrawn from consideration.

Independent claim 9 has been amended to include all of the limitations of amended product claim 1. If claim 1 is found to be allowable, Applicants respectfully request rejoinder of withdrawn method claims 9 and 12 pursuant to MPEP §821.04(b).

At page 2 of the Action, the Examiner states that to conform with standard practice and for the sake of clarity, independent claims should be amended to start with --A-- and dependent claims to start with --The--.

Applicants submit that the claims conform with standard practice as required by the Examiner.

At page 2 of the Action, claims 4-8 and 14-15 are *provisionally* rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-5 and 6-14 of co-pending Application No. 12/095,828.

The '828 application was filed December 5, 2006, which is after the filing date of the present application, i.e., June 29, 2004. Pursuant to MPEP § 804(I)(B)(1), in the case of a double patenting rejection in two co-pending applications, a terminal disclaimer should only be required

in the later filed application. Therefore, Applicants respectfully request that the double patenting rejection be withdrawn when it is the only remaining rejection in the present application.

At page 3 of the Action, claims 1, 4-8 and 14-15 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement.

At page 7 of the Action, claims 1, 4-8 and 14-15 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Villani et al. (*J. Appl. Microbiol.* 2001, 90, 430-39, "Villani") or Fortina et al. (*Food Microbiol.* 2003, 30, 397-404, "Fortina") or Paludan-Muller et al. (*International J. of Food Microbiol.* 73 (2002) 61- 70, "Muller") taken with Setchell *et al.* (US 7,396,855, "Setchell") and Elliott *et al.* (Journal of Clinical Microbiology, 1991, 29(12): 2731-2734, "Elliott").

At page 9 of the Action, claim 3 is indicated to be allowable.

As noted, claim 1 has been amended to incorporate the subject matter of claim 3. Accordingly, withdrawal of the § 112 and § 103 rejections is requested.

Allowance is respectfully requested. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

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